

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JAMES DAVID GEORGE BURT,

No. 05-11568

Debtor(s).

TERRY JANSEN, et al.,

Plaintiff(s),

v.

A.P. No. 05-1113

JAMES DAVID GEORGE BURT,


Defendant(s).

Memorandum on Motion to Dismiss

In dischargeability actions governed by FRBP 4007(c), even compelling equitable factors cannot excuse a late complaint. *In re Hill*, 811 F.2d 484, 487 (9th Cir. 1987). Plaintiffs' reliance on *Kontrick v. Ryan*, 540 U.S. 443, 157 L.Ed. 2d 867 (2004), is misplaced, since that case only held that the issue of timeliness cannot be raised for the first time after the case has been decided on the merits. In this case, an affirmative defense of untimeliness was pleaded in the answer and the motion to dismiss was brought before the case was heard on the merits.

1 For the foregoing reasons, defendant's motion to dismiss will be granted. Counsel for the debtor
2 shall submit an appropriate form of order.

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4 Dated: February 21, 2006

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7 Alan Jaroslovsky
8 U.S. Bankruptcy Judge
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